



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED] ki
[REDACTED]
[REDACTED]

DECISION

CWK/159816

PRELIMINARY RECITALS

Pursuant to a petition filed August 11, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Lutheran Social Services of Wisconsin & Upper Mich in regard to Medical Assistance, a hearing was held on September 11, 2014, at Elkhorn, Wisconsin.

The issue for determination is whether the available evidence demonstrates that the agency correctly discontinued Petitioner's waiver benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED] ki
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No appearance

Lutheran Social Services of Wisconsin & Upper Mich
CLTS Program Manager
3003 N. Richmond St.
Appleton, WI 53217

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.

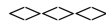
2. This appeal was filed to contest the discontinuance of Petitioner's waiver benefits. There was no appearance by the agency or submission of exhibits. From parental testimony it appears that benefits were discontinued as the agency concluded that Petitioner no longer meets level of care requirements.
3. Petitioner is 16 years of age (DOB [REDACTED]). He has a diagnosis of autism. He is a sophomore in high school. He is in smaller classes and an aide is assigned to help the class. He has received services through the waiver program since he was age 4.

DISCUSSION

The Department of Health Services maintains a web site that links the various resources used by the Department to describe the Wisconsin's Children's Long-Term Support Waivers program and details the criteria used to determine eligibility:

Wisconsin's Children's Long-Term Support Waivers (CLTS Waivers) make Medicaid funding available to support children who are living at home or in the community and who have substantial limitations due to developmental, emotional, and/or physical disabilities. Funding may be used to support a range of different services that are identified based on an assessment of your child's specific needs and identified goals or outcomes.

<http://www.dhs.wisconsin.gov/children/clts/waiver/family/index.htm>



All children or young adults must meet the basic requirements listed below for CLTS Waivers eligibility. To qualify for certain types of funding, there may be [additional requirements](#).

To participate in the CLTS Waivers, your child must:

- be under 22 years of age;
- be eligible for Wisconsin Medicaid, including:
 - be a United States citizen or have acceptable immigration status;
 - be a Wisconsin resident;
 - not have income in their name in excess of the current Medicaid standards;
- live at home or in a foster care setting;
- have a [level of care](#) (PDF, 134 KB) need that is typically provided in an institutional setting such as a hospital, a nursing home, or an institution for people with developmental disabilities;
- be able to receive safe and appropriate care at home and/or in the community; and
- be able to receive safe and appropriate care at home and/or in the community that does not have a cost to the Wisconsin Medicaid Program that exceeds the cost Medicaid would pay if the child were in an institution

<http://www.dhs.wisconsin.gov/children/clts/waiver/family/eligibility.htm>

Again, the purpose of the Children's Long Term Support Programs is to provide individuals with a community alternative to institutionalization. *See Medicaid Waivers Manual Chapter I Overview and Administration Page I-1.* Among a number of eligibility criteria is the requirement that a child meet an institutional level of care. There currently are four levels of care: hospital, nursing home, psychiatric hospital, and intermediate care facility for the developmentally disabled (ICF-DD).

The DHS has developed policy, found at *Appendix A-10 to Bureau of Long-Term Support Medicaid Home & Community-Based Waivers Manual (Manual)*, which defines and describes those childhood care levels and contains the requirements needed to qualify for Child's Long Term Support Programs. This manual was updated in 2011. Though there is an assumption here that it is the ICF-DD level of care at issue I am including a description of all levels of care just so Petitioner's parents are aware of them for future

reference and in case it is not the ICF-DD level that is involved. The levels of care in brief are (all emphasis in the original):

- Hospital Level of Care

A child with a Hospital – Physical Disabilities (PD) Level of Care has needs that are typically met in an in-patient medical hospital setting. The child's medical needs must be chronic, persistent and expected to last at least six months from the date of review. The skilled care needs cannot be acute and of a short-term duration. *The frequency and complexity of the required skilled medical interventions must be so substantial that without these direct, continuous skilled medical interventions, the child is at risk of institutionalization within a long-term, in-patient medical hospital.*

- Psychiatric Hospital Level of Care

The child with a Psychiatric Hospital - Severe Emotional Disturbance (SED) Level of Care has a long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist. In addition, this child demonstrates persistent behaviors that create a danger to self or others, requiring ongoing therapeutic support in order to be able to live at home and in the community. *The intensity and frequency of the required ongoing therapeutic support must be so substantial that without the support the child is at risk of inpatient psychiatric hospitalization.*

A child may be assigned this level of care if the child meets **ALL FOUR of the criteria listed below** for Severe Emotional Disturbance. The criteria are:

1. The child has a **Diagnosis** of a mental health condition; and
2. The child's mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific **Duration** of time; and
3. The child is in need of **Involvement with Service Systems** related to mental health support; and
4. The child exhibits **Severe Symptomology or Dangerous Behaviors** at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

- Intermediate Care Facility for Developmental Disabilities (ICF-DD or ICF-MR)

A child with an ICF/MR - Developmental Disability (DD) Level of Care has a permanent cognitive disability, substantial functional limitations and a need for active treatment. The level of care criteria is based upon the child having needs similar to people in an intermediate care facility for children with mental retardation (ICF/MR). *The intensity and frequency of required interventions to meet the child's functional limitations must be so substantial that without the intervention, the child is at risk for institutionalization within an ICF/MR.*

A child may be assigned this level of care if the child meets **ALL THREE of the criteria listed below** for Developmental Disability. The criteria are:

1. The child has a diagnosis of a **Cognitive Disability** that substantially impairs learning and that is expected to continue indefinitely; and
2. The child demonstrates **Substantial Functional Limitations** when compared to age appropriate activities that are expected to last a year or longer; and
3. The child has the **Need for Active Treatment.**

(emphasis in the original)

- The Nursing Home Level of Care

The child with a Nursing Home - Physical Disabilities (PD) Level of Care has a long-term medical or physical condition, which significantly diminishes his/her functional capacity and interferes with the ability to perform age appropriate activities of daily living at home and in the community. This child requires an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. The special medical needs warrant skilled nursing interventions that require specialized training and monitoring that is significantly beyond that which is routinely provided to children. *The intensity and frequency of required*

skilled nursing interventions must be so substantial that without direct, daily intervention, the child is at risk for institutionalization within a nursing home.

.....

Taken from Appendix A-10 to Bureau of Long-Term Support Medicaid Home & Community-Based Waivers Manual

Again, from the testimony of the parents it appears that Petitioner has been a waiver programs participant at the ICF-DD level of care. It is their impression that the determination that he was no longer met the level of care requirement was based on the conclusion that he no longer has functional limitations that meet the requirements for eligibility. There is nothing else in the record to suggest it is a different area of the ICF-DD that is at issue. Their testimony was, however, sufficient to convince me that Petitioner does have functional limitations in the areas of communication and social competency and the ADLs of bathing, dressing and grooming. Petitioner can get in the shower but has to be directed to wash and use soap. He can dress but does not know if, e.g., a shirt is on inside out. He is not aware of his grooming. He does not make friends. Treatment remains necessary.

The agency has not demonstrated a reason for the discontinued benefits and Petitioner's parents' testimony did provide a basis for at least a prima facie showing that Petitioner continues to meet the ICF-DD level of care.

Finally, though Petitioner's parents were knowledgeable as to the ICF-DD level of care, I have included a copy of that level of care requirements from the *Manual* with their paper copy of this decision.

CONCLUSIONS OF LAW

That the agency has not demonstrated that it correctly discontinued Petitioner's waiver benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to reverse the discontinuance of Petitioner's waiver benefits within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

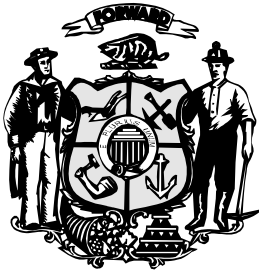
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of October, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 30, 2014.

Lutheran Social Services of Wisconsin & Upper Michigan
Bureau of Long-Term Support